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Synergy and Effectiveness of Law: Human-Centered Approach

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From a perspective of human-centered approach to comprehension of Law, the synergetic characteristics of Objective and Positive Law determining the effectiveness of its impact on social relations are investigated; the correlation of optimum legal regulation and well-balanced in terms of rights and obligations Law content, as well as the reliance on the synergetic characteristics of Law and the common factors of its development are substantiated. Law is characterized by independence and self-organization, that is, synergy. Consequently, the process of inner form of law elements genesis and development, their content are also subjected to self-organization. Thus, within the scientific investigation of Objective (Positive) Law synergetic element, the content of legislative-regulatory tools is of primary importance. It is essential that it should contribute to the efficient legal regulation and correlate with the principal regularities of any political and legal organization of the society. Otherwise, it will cause harmful consequences for the organization itself and even destroy it. Moreover the optimal interaction of the rights and obligations will enhance the effectiveness of legal regulation and provide the most complete implementation of normative-regulatory tools. An eternal form of law is subject to self-organization too. The intensity of synergy in a certain legal source is the result of its genesis and the process of its functioning within a particular legal family.

Keywords: synergy, law, system attributes, effectiveness.

Introduction

Law, having impact on different spheres of social life, acts as a regulator of social relations. It is its principle function. The characteristics of Law as the system of formally determined and compulsory rules widely used in Soviet jurisprudence and in contemporary legal literature require the predominance of outer (the state) impact on social relations by means of legal sources. The idea of the supremacy of the state over the Law is within the frames of so-called

state-centered approach to the comprehension of Law.

Theoretical framework

Contemporary scientific researchers carry out a different, so-called human-centered, approach to the comprehension of Law (Shafirov, 2004: 34-87). Within this frame Law is regarded as a general limit of freedom and behavioral justice provided by the society and the state. The state is assumed not to be superior to the Law,

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to dominate over it. The mission of the state regarding to the Law is “to give certain principles specific legal features (Alekseev, 1994: 73).

Consequently, Law is characterized by independence and self-organization, that is, synergy. As for the state, its role must not exceed the limits of its statutory consolidation and provisions.

Statement of the problem

What is synergy as the feature of Law? To what extent does its intensity determine the impact on social relations?

Discussion

Synergy (comes from Greek synergeia with the meaning of partnership, cooperation) is a joint activity of different potentials or types of energy in an integrated activity (Philosophical Encyclopedia, 1994). It is the principle task of Law serving as a social regulator to have integrated impact on social relations. The content of contemporary Law and the mechanism of its impact on social relations are very complicated. The effectiveness of its main function implementation depends on the extent of the organization (or self-organization) of Law, its inner and outer structure, its content, the extent its values are accepted in the society. The provisions legislatively mandated superiorly will hardly be implemented if they are denied by the majority. Moreover, in the situation when Law is taken by an entity as a value, he/she/it aspires to effectuate it satisfying both personal and social requirements. Opposite to it, when an entity follows laws because of the fear to be punished, he/she/it tries to avoid it by any means. The effectiveness of law is drastically reduced. Let alone the denial of law, negative attitude to it. Such psychological perception is quite logically results in violation of law.

Herein, a synergetic component, the extent of law self-organization and the interaction of its

constituent elements could appear as one of the essential criteria of the effectiveness of Objective and Positive Law. To determine it, first of all, we will try to answer the question: in what part of Common and Positive Law can we find self-organization?

On investigating this problem some scientists focus on the ways of regulatory tools (legal resources) consolidation: «Herewith, the key factor of self-organization extent ... in every particular case is the form of legal provision» (Vetyutnev, 2002: 65).

This approach reveals only outer part of Law. Here all the processes of self-organization are confined to the procedures of formalization of legal rules to legal sources which will be discussed a bit later. However, a synergetic component of Objective Law is much greater; its effectiveness, first and foremost, is the result of inner organization (self-organization) of this phenomenon. The only function of legal sources is to formalize certain content, expressed in the system of law-making and regulatory tools, so, self-organization of legal substance appears first of all, in the inner form of Law, in its content.

It is under the illusion that such elements of inner form of law rules and, moreover, normative generalizations are in some permanently recorded form, once and for all given by the state. The process of these elements genesis and development, their content are also subjected to self-organization.

First, the majority of human rights and liberties are considered to be an integral part of a person as a bio-social entity (natural rights). The state provides rather than presents them to citizens. Carl Marx presumed that the state acting by the Legislative power would not create human rights and liberties because the Legislative does not make a law, it only discloses and formulates it (Marx, Engels, 1974: 162). It is the first but not

the only demonstration of Objective Law self-organization.

Second, legal substance is dynamic, that is, it is able to be modified following social relations development. Such changes, as a rule, are the result of opposition between more complicated social relations and obsolete rules of conduct. The given opposition makes a rule of conduct be transformed and progress as the choice is limited here: a provision will either change or will stop regulating the conduct effectively.

Third, the content of Objective (Positive) Law provides certain limits of behavioral freedom. An entity affirmatively authorized by law can make a choice between several types of behavior (implementing alternative and optional regulations) preferring one that is provided by the prescription coordinating similar relations (analogue), concretizing the rule of conduct according to the current situation (implementing situational provisions), can also create one more rule of conduct different from recommended one (implementing dispositional affirmatively authorized by law provision), or based on advice or proposal to regulate any given relation independently (implementing advisory provision). Ultimate freedom of choice and activity limits is provided to an entity by legislative generalizations (principles, the purposes of Law).

Thus, within the scientific investigation of Objective (Positive) Law synergetic element, the content of legislative-regulatory tools is of primary importance. It is essential that it should contribute to the efficient legal regulation and correlate with the principal regularities of any political and legal organization of the society. Otherwise, it will cause harmful consequences for the organization itself and even destroy it.

Legal literature considers some regularities, for example, collective work activities, reproduction of the cast in the same mould, state institutions system construction, providing

peaceful co-existence of people within a certain territory and social relations regulation through practical and understandable to people legal rules that contribute to the progress of political and legal organization (Drobyshevsky, 1995: 162).

Some researchers tend to place not only informative but also organizational requirements to legal regulations. In this vein, L. Fuller writes that individuals – addressees should be informed of regulations, which must be clear for them, not distorted if applied, and reasonable. Hereby, it is significant to ensure consistency of formulated legal provisions with respect to each other; moreover, they must not be changed too often so that the individuals, who these regulations are aimed at, could follow them in their activities (Fuller, 1964: 39-88).

Compliance with these requirements, of course, intensifies the effectiveness of law. The way these requirements are organized in Objective Law in terms of legal regulation is also very important.

The content of Objective Law is determined to a greater extent by the rights and obligations. In the process of social relations control there is a certain standard of conduct which contains the limit of rights and obligations. The highest efficiency is achieved through their optimal ratio because creating a normative-regulatory tool is not a goal in itself. It is more important how effective it will be as the means of social relations regulation. Social relations impact efficiency, in its turn, directly depends on the observed balance and optimal correlation between the rights and obligations.

From our point of view, at the present time a number of general problems prevent from achieving the highest efficiency of legal impact; they are as follows:

- attempts to identify the rights and obligations, the formation of the concept

of law as an obligatory (compulsory) phenomenon;

- making prescriptions of both presumable and indispensable character, ambiguity in interpretation and application of such provisions;
- lack of balance between the rights and obligations in the legislation, granting the rights without imposing corresponding obligations;
- poorly developed legal drafting methodology, placing legal obligations in the articles devoted to the rights, and vice versa;
- Lack of legal awareness and legal culture of citizens, as reflected in their inability to exercise their rights and in ignoring their obligations, etc;

These identified problems require not only the expansion of human capabilities, and providing them with the means for initiative and creativity, but also setting well-defined limits of presumptive conduct, the balance between the rights and obligations, improving the methods and procedures for providing the legislative framework for the rights and obligations as well as the practice of their implementation.

Focusing only on the rights while relegating obligations to the background or ignoring them, can provoke, in many cases, the aggravation of human desire to exercise their rights immediately and in full, without concern for the rights of others.

There is no doubt that the recognition of obligations as an integral part of legal system, necessary for normal functioning of all legal institutions will enhance this component in Positive Law.

Consequently, the optimal interaction of the rights and obligations will enhance the effectiveness of legal regulation and provide the

most complete implementation of normative-regulatory tools.

Now, get back to the formalization of regulatory tools in the legal sources. The latter ones are also subject to self-organization, although it is negligible, since, as we have already noted, it is applied only to the procedure of formalization of normative tools (external form). Nevertheless, the methods of formalization of legal provisions and normative generalizations influence the achievement of legal effectiveness.

Each type of legal source is characterized by its particular extent of self-organization. The maximum level of self-organization is achieved during the formation of a legal custom. In this case the rules of conduct are formed by natural means; persons are willing to obey them by force of habit. Self-organization is less common for judicial precedent, regulatory legal act and law treaty, as the determination of their content is the relevant authorities' responsibility.

Some scientists believe that self-organization is not specific to certain methods of expression and formalization of normative-regulatory tools: "it is extremely difficult to imagine normative-regulatory act, which appears spontaneously – from beginning to end it is formed by human (more precisely, political) will (Vetyutnev, 2002: 65).

It is difficult to accept such a point of view. The criteria serving to determine a synergetic component of legal sources in the process of their creation is the compromise or lack of it between the entities, rather than spontaneity of literature sources appearance. The law can hardly be considered as one devoid of the principles of self-organization if it was drafted by an interested agency and besides, if it was subject to public consultation, was the issue of political debates and adopted with numerous amendments.

Another manifestation of self-organization in relation to legal sources is their existence and

functioning within a particular legal family. After all, the same sources have different legal power and authority depending on a kind of legal family involvement. In this view, a judicial precedent typical of Anglo-American legal family is rarely used as the source in the continental law. This is due to the legal family genesis and the historical traditions of a legal source application that, by all means, also implies a certain self-organization of formulating normative-regulatory tools.

Thus, an outer form of law is subject to self-organization. The intensity of synergy in a certain legal source is the result of its genesis and the process of its functioning within a particular legal family.

One more important aspect of synergetic Objective(Positive)Lawcomponentdetermination is the probable occurrence of so-called synergetic effects of legal influence.

What is synergetic effect? What is its essential matter?

In philosophical literature synergetic effect is defined as disproportionate enhancement of all system elements properties which is caused by joining, the integration of independent units in the integrated whole. That is, system effect is mainly associated with the appearance of a new system. In this case, both enhancement and leveling of some general property are under consideration (Gal, 2012: 470).

In sociological literature synergetic effect is associated only with the increasing efficiency of the system, caused by the integration of independent units.

It is evident that the reduction of efficient system performance, though caused by the integration of its independent units, is not a system effect (Fandel, Giese, Mohn, 2012: 816).

In our opinion, synergetic effect of law involves increasing its effectiveness and operability as a result of certain characteristics (properties) surplus due to their interconnection,

integration, consolidation or leveling of independent units in an integrated system.

The study of the internal mechanisms of system legal effects can contribute to better understanding of evolution and self-organization processes as they can be considered as consequential appearance of new properties and phenomena not inherent in any system component.

Such peculiar system performance was observed by ancient thinkers. For example, Aristotle argued that the whole is always greater than just the sum of its constituent parts. Much later Bogdanov formulated this idea for the systems in the following way: «The system detects some properties surplus and produces a certain super property if to compare it with the former ones» (Bogdanov, 2002).

According to D.F. Ilyasov «...the origin of system effect is expressed in the law of transformation of quantity into quality known from Philosophy. Any system component has many properties, some of which are suppressed while others, on the contrary, acquire distinct expression in the process of forming associations. In other words, some properties are summed while the others are neutralized»(Ilyasov, 2002).

To specify the system effect of some system (or verify its existence) there is a simple method: to divide the system into components mentally and analyze what property (effect) disappeared. For example, none of the aircraft components can fly; “truncate system” can not function, either, like an airplane without a wing or without an airplane handling. Divide any system into constituent parts and you will see that at some stage of division it loses its main properties.

In case of Objective (Positive) Law its regulatory properties could, as an example, be lost if to exclude its provision by the society and the state (with the help of positive and negative tools).

From our point of view D.F. Ilyasov's opinion concerning three concepts of system effect origin is very attractive:

- First, positive properties are added and intensified, while negative properties are unchanged;
- Second, positive properties are added, while negative ones nullify each other;
- Finally, there is the following idea: the sum of positive properties is intensified by converted negative properties (so-called, harm converted into some use) (Ilyasov, 2002).

In all these cases the key characteristics of system effect, namely, the increase of efficiency, effectiveness of the system and the origin of a property new for given system are expressed.

Thus, within the process of systematization of legal acts they are ordered, amended and in some cases new rules are adopted. When they are codified, useful for legal regulation principles and

rules are added, and what is more, new principles and norms able to intensify their regulatory impact on social relations are formed. However, the negative properties, such as inaccuracy, contradictions, "obsolete" rules are eliminated.

Consequently, the process of new codified legal rule formation results in the synergetic effect of social relations impact.

Conclusion

Law is a dynamic phenomenon, characterized by the high degree of self-organization. Its systemic properties and regularities predetermine the integrated behavioral pattern formation with the well-balanced content in terms of rights and obligations; whereas the pattern itself is vested in recognized and implemented legal sources. In the process of such pattern formation the synergetic effect of legal regulation is formed, that proves the effectiveness of this pattern and its ability to be implemented.

References

1. Alekseev S.S. *The Theory of Law*. Moscow, 1994. 243 p.
2. Bogdanov A.A. *Tectology. General Organizational Science*. Moscow, 1989. 183 p.
3. Vetyutnev Y.Y. (2002). Synergy in Law. *The State and Law*, (4) 65.
4. Drobyshesky S.A. *Political Organization of the Society, and Law as the phenomenon of Social Evolution*. Krasnoyarsk. 1995, 260 p.
5. Ilyasov D.F. System Effect as Phenomenon and Scientific Concept . Scientific report abstract: URL:<http://www.ipk74.ru> (дата обращения: 17.10.2011).
6. Marx K., Engels F. *Collected Edition*. Moscow, 1974. vol.1. 384 p.
7. Philosophical Encyclopedia. Moscow, 1994. 412 p.
8. Shafirov V.M. *Natural –Positive Law. Introduction into the Theory*. Krasnoyarsk, 2004. 246 p.
9. Fuller L.L. *The Morality of Law*. New Haven, 1964. 214 p.
10. Fandel, G., Giese, A., Mohn, B. (2012) Measuring synergy effects of a public social private partnership (PSPP) project. *International Journal of Production Economics*. Volume 140, Issue 2, pp. 815-824.
11. Gal, Michal S. (2012) Viral open source: competition vs. synergy. *Journal of competition law & economics* . Volume: 8 Issue: 3 pp. 469-506

Синергия и эффективность права: человекоцентристский подход

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С позиций человекоцентристского подхода к правопониманию исследуются синергетические свойства объективного (позитивного) права, определяющие эффективность его воздействия на общественные отношения; обосновывается корреляция наилучшего правового регулирования и сбалансированного с точки зрения прав и обязанностей содержания права учёта синергетических свойств права, закономерностей его развития.

Ключевые слова: синергия, право, системные свойства, эффективность.
